

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HAWAII-PACIFIC APPAREL GROUP,  
INC.,

Plaintiff/Counterclaim Defendant,

-against-

CLEVELAND BROWNS FOOTBALL  
COMPANY LLC and NATIONAL  
FOOTBALL LEAGUE PROPERTIES, INC.,

Defendants/Counterclaim Plaintiffs.

Case No.: 04 CV 7863 (DC)

**SUPPLEMENTAL LOCAL CIVIL RULE 56.1 STATEMENT OF  
MATERIAL FACTS IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT ON PRIORITY OF USE  
IN INTERSTATE COMMERCE\***

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\* Defendants have filed this document electronically.

In accordance with Local Civil Rule 56.1, Defendant/Counterclaim Plaintiff Cleveland Browns Football Company LLC and NFL Properties LLC, as successor-in-interest to Defendant/Counterclaim Plaintiff National Football League Properties, Inc. ("NFLP") by their attorneys, White & Case LLP, hereby submit the following additional facts as to which there exists no genuine issue of material fact for trial.

**THE QUALITY CONTROL PROCEDURES  
OF NATIONAL FOOTBALL LEAGUE  
PROPERTIES, INC.**

42. NFLP granted the right to use the trademarks of the NFL and its Member Clubs to third parties via Licensing Agreements. With regard to quality control, the Licensing Agreements routinely state:

All Licensed Products and their packaging must receive quality control approval by NFLP. All Licensed Products will meet uniform standards of high quality, style, construction, and appearance set by NFLP. Licensee agrees that it will sell no Licensed Products unless an NFLP Licensed Product Quality Control Approval Form ("Product Approval Form") for that Product has been signed by NFLP, returned to Licensee, and remains in full force and effect. The following conditions and procedures will govern NFLP's issuance of Product Approval Forms:

- (a) Licensee will supply within 10 days of any request by NFLP, at no charge to NFLP, such reasonable number of samples of Licensed Products and their packaging as NFLP may require.
- (b) At NFLP's request, Licensee will present its complete line of Licensed Products to NFLP at a mutually agreeable time, date, and site.
- (c) NFLP will make best efforts to evaluate Licensed Product submissions within 45 days of their receipt by NFLP.
- (d) Licensee will not deviate from the standards of quality of samples upon which Product Approval Forms are based. Departure from such quality standards constitutes breach of a material term of this License. NFLP may purchase at Licensee's expense any Licensed Products found in the marketplace which in NFLP's judgement [sic] are inconsistent with approved quality standards and bill such costs to Licensee. Licensee must also pay all Royalties otherwise consistent with approved quality standards.
- (e) Product Approval Forms must be renewed annually by NFLP pursuant to the terms and conditions set forth above.

(McDowell Decl. ¶ 54.)

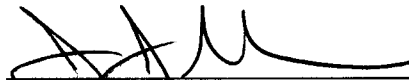
43. NFLP and its licensees followed the quality control procedure set forth in the applicable Licensing Agreement. (McDowell Decl. ¶ 55.)

**HP'S AGREEMENT WITH OWNER OF  
DEPUTY DAWG TRADEMARK**

44. HP agreed to refrain from using its TOP DAWG mark on certain goods and services to avoid litigation with the owner of the DEPUTY DAWG trademark. (Tracy Decl. Ex. F.)

Dated: New York, New York  
July 8, 2005

Respectfully submitted,



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